Supreme Court, U.S.
FILED
DEC 17 1979
MICHAEL RODAK, JR., CLERK

In the

Supreme Court of the United States

October Term, 1979

No. 79-942

In the Matter of
HARTFORD TEXTILE CORPORATION,
OXFORD CHEMICALS, INC.
WELLINGTON PRINT WORKS, INC.,
Debtors.

ROSE SHUFFMAN, As Executrix of
the Estate of OSCAR SHUFFMAN, Deceased,
Petitioner,

—against—

HARTFORD TEXTILE CORPORATION,
OXFORD CHEMICALS, INC.
WELLINGTON PRINT WORKS, INC.,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE U.S. COURT OF APPEALS FOR THE SECOND CIRCUIT

DAVID K. SHUFFMAN
Attorney for Petitioner
14 East 60th Street
New York, New York 10022
Telephone: (212) 755-0006

Printinghouse Press – Bar Ass'n Steno Serv. (Appeals Section) 212-840-1891

INDEX

	Page
Opinions Below	2
Jurisdiction	2
Questions Presented	3
Statement of Facts	6
Summary of the Argument	26
Argument	28
Importance of this Petition . . .	32
Conclusion	33

APPENDIX

APRIL 26, 1979 ORDER OF THE COURT OF APPEALS DISMISSING APPEAL	A-1
SEPTEMBER 26, 1979 EN BANC ORDER OF THE COURT OF APPEALS	A-2
SEPTEMBER 26, 1979 ORDER OF THE COURT OF APPEALS DENYING REHEARING	A-4

TABLE OF CASES AND AUTHORITIES

	Page
Article III, United States Constitution	3
Dictograph Products Company v. Sonatone Corporation, 230 F.2d. 131, (2nd Cir., 1956), reh'g denied, 231 F.2d 867 (1956)	3
Hazel- Atlas Glass Co. v. Hartford Empire Co., 322 U.S. 238 (1944)	3,4
Messinger v. Anderson, 225 U.S. 436 32 S.Ct. 739, 56 L.Ed. 1152	3,4
Pepper v. Litton 295 U.S. 308 (1939)	4,5
United States v. United States Smelting Refining & Mineral Co 339 U.S. 186, 70 S.Ct 537, 94 L.Ed. 750	3,4

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1979

----------x

In the Matter of :

HARTFORD TEXTILE CORPORATION, :
OXFORD CHEMICALS, INC., :
WELLINGTON PRINT WORKS, INC., :

Debtors. :

----------x

ROSE SHUFFMAN, As Executrix of :
The Estate of OSCAR SHUFFMAN, :
DECEASED, :

Petitioner, :

v. :

HARTFORD TEXTILE CORPORATION, :
OXFORD CHEMICALS, INC., :
WELLINGTON PRINT WORKS, INC., :

Respondents. :

----------x

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

The petitioner prays that a writ of certiorari issue to review the Judgment of the United States Court of Appeals for the Second Circuit, entered April 24, 1979.

OPINIONS BELOW

The United States Court of Appeals for the Second Circuit wrote no opinion in granting Respondents' Motion to Dismiss Appeal. The Order granting Respondents' motion is reprinted at page A-1 of the Appendix hereto.

JURISDICTION

The order of the United States Court of Appeals for the Second Circuit was entered on April 24, 1979. The en banc order of the United States Court of Appeals for the Second Circuit denying the suggestion for en banc rehearing of the April 24, 1979 order was entered on September 26, 1979, and is reprinted at page A-2, infra. The order of the United States Court of Appeals denying rehearing of the April 24, 1979 order was entered on September 26, 1979, and is reprinted at page A-4, infra.

The United States District Court also wrote no opinion in granting Respondents' Motion to Dismiss Appeal.

The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §1254.

---

*As used herein, "petitioner" refers to both Rose Shuffman, as Executrix of the Estate of Oscar Shuffman, Deceased and the late Oscar Shuffman.

QUESTIONS PRESENTED?

1. Whether under Hazel-Atlas Glass Co. v. Hartford Empire Co., 322 U.S. 238 (1944), the Bankruptcy Court breached its duty to honestly administer justice and perpetrated a fraud upon the Petitioner and the reviewing courts, including the Supreme Court, by refusing to vacate its Order and Amended Order which had been erroneously affirmed, especially when the District Court's Memorandum and Order directly contradicted the Bankruptcy Court's Orders?

2. Whether under Messinger v. Anderson 225 U.S. 436, 32 S.Ct. 739, 56 L.Ed. 1152, United States v. United States Smelting, Refining & Mineral Co., 339 U.S. 186, 70 S.Ct. 537, 94 L.Ed. 750 and Dictograph Products Company v. Sonatone Corporation, 230 F.2d 131 (2nd Cir., 1956), reh'g denied, 231 F.2d. 867 (1956), it was an "abuse of discretion" and "breach of duty" for the District Court to dismiss an appeal on motion without conducting a hearing on the merits, especially after another District Court acknowledged reversible error in its order which affirmed the Bankruptcy Court's Orders?

3. Whether under Messinger v. Anderson 225 U.S. 436, 32 S.Ct. 739, 56 L.Ed. 1152, United States v. United States Smelting, Refining & Mineral Co., 339 U.S. 186, 70 S.Ct. 537, 94 L.Ed. 750 and Dictograph Products Company v. Sonatone Corporation, 230 F.2d 131 (2nd Cir., 1956), reh'g denied, 231 F.2d. 867 (1956), it was an "abuse of discretion" and "breach of duty" for the

Court of Appeals to dismiss an appeal on motion without conducting a hearing on the merits, especially after the District Court acknowledged reversible error in its order which was affirmed by a previous Court of Appeals panel?

4. Whether, under Article III of the Constitution, the United States Supreme Court has a duty to honestly administer justice, and whether that duty includes exposing a cover up of a fix in the lower Federal Courts?

5. Whether, under Messinger v. Anderson 225 U.S. 436, 32 S.Ct. 739, 56 L.Ed. 1152 and United States v. United States Smelting Refining & Mineral Co., 339 U.S., 186, 70 S.Ct. 537, 94 L.Ed. 750, the United States Supreme Court has a duty to reverse its own order denying the Petition for a Writ of Certiorari in Case No. 79-178 which left stand the United States Court of Appeals for the Second Circuit's original affirmance of the District Court's order affirming a bankruptcy appeal in view of the District Court's intervening repudiation of its original order as clearly erroneous?

6. Whether, under Rule 19 of the Rules of the Supreme Court of the United States, Messinger v. Anderson, 225 U.S. 436, 32 S.Ct. 739, 56 L.Ed. 1152, United States v. United States Smelting, Refining & Mineral Co., 339 U.S. 186, 70 S.Ct. 537, 94 L.Ed. 750 Pepper v. Litton, 295 U.S. 308 (1939), and Hazel-Atlas Glass Co. v. Hartford Empire Co., 322 U.S. 238 (1944) the United States Supreme Court has a duty to vacate its orders denying petitions for writs of certiorari in Cases Nos. 77-1812 and 79-178,

the latter case being the one which had the effect of leaving stand the Court of Appeals affirmance of the repudiated District Court order, in view of the documentation obtained in response to the motion for leave to file petition for a writ of mandamus and petition for a writ of mandamus in Case No. 79-681, which documentation conclusively shows that the United States Court of Appeals for the Second Circuit perpetrated a fraud on the United States Supreme Court and obstructed justice in the former case by allowing an altered and forged order to stand for Supreme Court review?

7. Whether, under Pepper v. Litton, 295 U.S. 308 (1939), the United States Supreme Court must grant certiorari where a failure to do so in a prior petition for a writ of certiorari has resulted in a fraud and an injustice contrary to the honest administration of justice?

8. Whether the Supreme Court of the United States will join in the conspiracy to obstruct justice and cover up of the fix by refusing to correct the clearly erroneous orders of the Courts below, when two former Attorney Generals of the United States concur that the decisions below are clearly erroneous based upon documentary evidence, and have further been joined by the receipient of the New York State Bar Association's Criminal Lawyer of the Year Award for 1979, who has joined Petitioner's counsel on an appeal which urges that the District Court deliberately falsified an Order as part of the cover up of the fix by the Bankruptcy Court?

STATEMENT OF FACTS

Petitioner is the executrix of the estate of Oscar Shuffman, who, prior to the filing of the Chapter XI petition, had entered into a commission agreement with Hartford Textile Corporation, the debtor-in-possession. The contract provided that Shuffman was to receive a finder's fee of one cent per pound on all vinyl delivered to Hartford under a separate contract between Hartford and Rudd Plastic Fabrics Corporation. The contract between Hartford and Rudd called for periodic shipments of an eventual total of ten million pounds of vinyl.

At about the same time, and with the full knowledge of Hartford, Shuffman entered into an agreement with Rudd providing that Shuffman was to receive a sales commission of four percent of all merchandise sold and shipped to Hartford during a five-year period.

Shortly thereafter, Rudd notified the debtors that it would not honor its agreements with the debtors unless it was excused from delivering a lighter yield of material called for in the purchase order agreements which it had accepted.

Rudd, the debtors, Shuffman and their respective counsel then met together, resulting in a reaffirmation by Rudd of its entire commitment to the Debtors and of its obligation to Shuffman.

Rudd then started shipping to the debtors under the purchase orders; but continued to withhold the lighter yield. Rudd also refused to honor its contract with Shuffman. The debtors did honor their agreement with Shuffman, paying commissions as merchandise was received and accepted from Rudd.

Before Hartford encountered the financial difficulties that forced it into Chapter XI, Rudd made partial deliveries of only the heavier yield of vinyl pursuant to the agreement, Hartford paid commissions to Shuffman based upon the amounts received, Rudd failed to pay Shuffman on the amounts shipped, and Shuffman commenced an action against Rudd in order to force compliance with his agreement with them.

During the Shuffman-Rudd litigation, Hartford agreed to a voluntary price increase in an effort to obtain the lighter yield of vinyl under its contract. However, Rudd still persisted to deliver only the heavier grade of vinyl and refused to deliver the lighter yield. Shuffman then settled his litigation against Rudd by reducing his compensation from Rudd on the first two purchase orders predicated upon Rudd's agreement to make delivery of the lighter yield, extending the Shuffman-Rudd agreement to whatever period of time was necessary in order for Rudd to make full delivery of the original ten million pounds of vinyl as called for by Hartford.

As financial problems beset Hartford, it fell behind in its payments to Rudd for goods received. Approximately two weeks before Hartford filed its Chapter XI petition, Rudd notified Hartford that, because of Hartford's delinquencies, it would cancel the supply contract. Hartford countered that it was Rudd who breached the agreement by failing to deliver the lighter yield of vinyl and was withholding payments as a result.

For the purpose of the bankruptcy proceedings, Hartford's counsel, Samuel Bushwick, Esquire, associated himself with the firm of Weil, Gotshal and Manges. Both Bush-

wick and the firm of Weil, Gotshal and Manges worked and consulted together in the filing of the Chapter XI petitions and the statement of affairs revealed that both were paid in advance of the filing.

In the original petitions of Hartford and Wellington, four lawsuits against the debtors and their officers were omitted, although Mr. Bushwick was defense counsel on each. These four lawsuits, started by the brothers and sister of the president of Hartford (Supreme Court, New York County, Index Nos. 2162/65, 3528/65, 7443/65 and 9400/65), charged the corporate officers with fraud, mismanagement, waste and conversion. Significantly, one of these actions was a stockholders' derivative action.

Subsequently, when the schedules of assets and liabilities and the statement of executory contracts were filed, no mention was made of these pending litigations and no mention was made of the agreement with Shuffman. The statement of executory contracts did, however, list the Hartford-Rudd agreement.

Immediately after filing the Chapter XI Petition, the debtor-in-possession, on advice of counsel, waived Rudd's pre-petition breach and demanded continued performance under all the terms of the pre-petition contract, under threat of suit, including delivery of all grades of vinyl.

As a direct result of this threat of suit, Hartford and Rudd entered into compromise negotiations to which Shuffman was originally invited and subsequently excluded, with a promise that his interests would be protected and given a $1,500.00 pre-payment of his fee from Hartford as a sign of good faith. The

compromise agreement eventually reached, which called for delivery of approximately 1.2 million pounds of vinyl at an increase in price and excused Rudd from delivery of the lighter yield, which was to be obtained elsewhere, was submitted to the Creditor's Committee for approval and in so doing no mention was made of the Shuffman agreement. Predicated upon the approval of the Creditor's Committee, it was approved by the court, without prior notice to Shuffman and with no mention being made of the Shuffman agreement or the pre-payment to Shuffman. Shuffman had not yet filed a claim against the debtor. However, the debtor continued its monthly payments to Shuffman.

Shuffman was then threatened with the discontinuance of his monthly commission payments unless he cooperated with the debtor's efforts to arrange with W.R. Grace a settlement along the lines of the Hartford-Rudd settlement. As a result, Shuffman decided to file a formal (pro se) claim to protect his interests.

Shuffman's pro se claim, when filed, was for approximately $80,000 for work, labor and services pursuant to contract. During the next three months, and prior to the confirmation of the plan of arrangement, Shuffman was paid, pursuant to his contract, on goods received and accepted by Hartford subsequent to the filing of its petition and delivered pursuant to the compromise agreement. Shuffman accepted these payments "as only part payment on money owed to O. Shuffman. . . . only as per original agreement of R. Magid, Pres. Hartford Textile Corp. and Oscar Shuffman." These payments were listed and reported to the Court as expenses of administration.

Approximately three months after Shuffman filed his pro se claim, the plan of arrangement was confirmed and the debtor filed an objection to Shuffman's claim stating that Hartford's books and records showed $1,232.87 owing to Shuffman and simultaneously discontinued making payments to Shuffman on advise of counsel since there was no new agreement and withdrew its objection to the W.R. Grace claim. On the date of confirmation, Shuffman was indebted to the debtor in excess of $2,000.00 for unearned commissions advanced to him and the Hartford Rudd compromise agreement had about four months to go.

Extensive negotiations were had by the debtor and Shuffman's then counsel, during which Shuffman died. When it appeared likely that a tenative agreement was in the offing the objection to Shuffman's claim was withdrawn.

Approximately eleven months later, when negotiations broke off, the debtor moved to restore the objection and Shuffman's counsel, at that time counsel for the executrix, cross-moved to amend the claim to assert an administrative expense in part, entitled to priority and/or to amend the compromise order.

In its answer to the application, the debtor-in-possession admitted that it was a party to listed executory contracts with Rudd and had listed these contracts in its statement of executory contracts. The debtor also maintained that its only indebtedness to Shuffman was $1,232.87, pre-petition.

On December 20, 1976, both motions were argued before the Bankruptcy Court. The Bankruptcy Court granted the debtors' motion to reinstate its objection, refused to allow time for discovery, and simultaneously ordered an immediate hearing limited to the pre-petition liability, while reserving decision on the Cross-Motion to amend the claim so as to treat the major portion thereof as an administrative expense entitled to priority, for payment of the administrative expense, or, in the alternative, to amend the Court-approved Hartford-Rudd compromise order to provide for the continuation of commission payments to Shuffman from both Hartford and Rudd. To the cross-motion, as exhibits, were attached copies of statements by Hartford as debtor-in-possession to Shuffman and checks paid pursuant thereto. The Court also held that indebtedness, if any, incurred during the Arrangement and thereafter was a question of law, not fact, for which no hearing was required or testimony allowed.

On June 1, 1977, the Bankruptcy Court ruled that the claim be reduced to $432.67, as a general unsecured claim, based upon the testimony of Reuben Fox, debtors, Comptroller, that a 64(a)(2) payment had been made to Shuffman pursuant to Court Order shortly after the petitions were filed, based upon entries in the books of Oxford Chemicals, Inc., another one of the debtors. The report of the Court appointed accountants, introduced as an Exhibit, found no reference to indebtedness owed to Shuffman in Oxford's books.

The cross-motion of the Estate was denied substantially because the Court characterized the Court-ordered debtor-Rudd Compromise as a "new" agreement. The Court found that the original Hartford-Rudd and Shuffman-debtor agreements had terminated, although the Court also held that Rudd's Notice of Cancellation for the executory contracts listed in the debtor-in-possesion's Statement of Executory Contracts was sent after the filing of the Chapter XI Petitions. The original Hartford-Rudd agreements had no provision covering the eventuality of insolvency of either party.

The Bankruptcy Court further held that there could be no post-petition liability to Shuffman in the absence of a post-petition contract. The Opinion, in pertinent part, stated:

> The simple fact is that there was no post-petition agreement between claimant and the debtor-debtor-in-possession and there cannot be a priority claim arising from a contractual position without a contract. Accordingly, there is no relevance to cases dealing with executory contracts at the time of filing in this court, and which are dealth with under Section 313(1), 11 U.S.C. §713(1).
>
> The Court also said:
>
> Simply stated, the contract between the debtor-in-possession and Rudd after the Chapter XI was a new contract, and if it did not contemplate a need for Shuffman, it did not have to.

On June 28, 1977, Petitioner, claiming error, moved to amend the findings, make additional findings and to amend the Decision. Upon reconsideration, the Bankruptcy Court found, without conducting an evidentiary hearing, that in view of the debtor-in-possession's voluntary payments which the Court overlooked in its prior Opinion there must have been a new post-petition finder's fee agreement between Shuffman and the debtors-in-possession and accordingly amended the prior Opinion and Order to call for the payment of $3,346.71 to Shuffman for the unpaid commissions on Rudd's deliveries made after Confirmation and Discharge on September 5, 1974 as administrative expenses, in addition to the total of $9,000 which had been voluntarily paid to Shuffman between the filing of the petition and the confirmation of the Plan of Arrangement and Discharge Order. The Court also amended its Opinion to find that Rudd's Notice of Cancellation was sent <u>prior</u> to the filing of the Chapter XI Petitions.

On February 22, 1978, the United States District Court for the Southern District of New York (Brieant, J.) affirmed the Bankruptcy Court's Order and Amended Order in all respects. The District Court cited a case calling for per centage payments to pre-petition creditors to support the Bankruptcy Court's Amended Order which approved the post-Confirmation dollar for dollar brokerage commission payments to Petitioner.

On March 28, 1978, at the argument of the motion for rehearing, the District Court stated that it would "misread" his Memorandum

and Order to suggest that he had approved any commission payments for the post-Confirmation period. Further the Court stated that it thought that the Amended Order provided commission payments for deliveries made during the Chapter XI not after. However, due to the intervening filing of a Notice of Appeal to the Court of Appeals for the Second Circuit, the District Court was divested of jurisdiction to correct its errors.*

---

* On October 26, 1979, Petitioner filed a Motion for Leave to File a Petition For A Writ of Mandamus and Petition For a Writ of Mandamus (Case No. 79-681) seeking to obtain a transcription of the oral argument held in the Court of Appeals on May 9, 1978 on Petiioner's first Motion for Order Mandating Jurisdiction Back to the District Court. On November 8, 1979, the Court of Appeals granted a motion seeking transcription of the Court's tape recording which had been pending for over one year and provided Petitioner with a semi-complete transcript of the argument.

The transcript provided conclusively shows that a "CORRECTED" Order received one week after receipt of the original order on the motion for remand was altered and falsified by Staff Counsel to the United States Court of Appeals for the Second Circuit.

When brought to its attention, the Court of Appeals, as opposed to correcting the forged, back-dated document, kept silent and allowed

Immediately prior to the "charade" hearing, Petitioner on August 9, 1978 and September 19, 1978 moved to have the Bankruptcy Court vacate its clearly erroneous order and "amended order" and to disqualify itself in an effort to obviate the necessity of the continuing appeals. The Bankruptcy Court refused to vacate its order and amended order and further refused to recuse itself despite the fact

---

* continued from previous page

the phoney order to stand for Supreme Court review in Case No. 77-1812.

In her Petition for a Writ of Certiorari in Case No. 77-1812, Petitioner advised the Supreme Court that "amended findings" of the Bankruptcy Court resulted from a "fix", which was being aided and abetted by the United States Attorney. Despite the District Court's categorization of the forged, altered "CORRECTED" Order as "incomprehensible", the Supreme Court refused to review the phony order and paved the way for a judicially orchestrated cover up of the fix.

On September 19, 1979, the Court of Appeals conducted a "charade" hearing on Petitioner's Motion for Order Directing the President to Appoint a Special Prosecutor to investigate the charges of wrongdoing which motion had already been denied ten weeks earlier by a previous panel. The events leading to the "phony" hearing, and the participants' knowledge thereof, are detailed in the Motion for Leave to File a Petition for a Writ of Mandamus, etc. in Case No. 78-681

that the amended findings, reached without an evidentiary hearing, provided for the post-Confirmation commission payments, which the District Court mistakenly and unwittingly had approved.

Petitioner also moved in the District Court to have that Court advise the Court of Appeals of its erroneous Memorandum and Order, in the hope of obviating the imminent hearing of the Appeal in the Court of Appeals. The District Court, though stating it had made an "awful mistake," denied the motion for "lack of jurisdiction", thereby leaving it to the Court of Appeals to correct the error.*

---

* On or about December 12, 1979, Petitioner filed a Petition for a Writ of Certiorari in the Supreme Court to review the Court of Appeals' Order dismissing the appeal from the District Court's Order denying this motion. Petitioner maintains that the District Court and Court of Appeals breached their duty to honestly administer justice by refusing to correct the clearly erroneous orders.

On October 19, 1978, the stage was thus set for oral argument in the Court of Appeals seeking reversal of the District Court's clearly erroneous Memorandum and Order which had affirmed the Bankruptcy Court's original Order and Amended Order which provided for the post-Confirmation dollar for dollar commission payments to the Petitioner. Among the three judges who comprised the October 19, 1978 panel where two of the Judges who participated in the September 19, 1978 "charade" hearing on the motion seeking the appointment of a Special Prosecutor.

On October 25, 1978, Petitioner returned to the Bankruptcy Court seeking an Order of Contempt against Respondents and their counsel for the numerous false, misleading and otherwise deceptive statements made throughout the course of the proceedings. Despite denying the motion for lack of jurisdiction, the Bankruptcy Court did direct the filing of a Complaint against Respondents and their counsel with the United States Attorney pursuant to 18 U.S.C. § 3057, charging, among other things, perjury, conspiracy, fraud, filing false documents, etc. According to the Court, based upon the documentary evidence, the original findings were not only clearly erroneous but resulted from the numerous false documents and other acts of bankruptcy fraud perpetrated by Respondents and their counsel.

On or about November 9, 1978 Petitioner filed a similar motion for orders of contempt in the District Court based upon Respondents' and their counsel's wrongdoing in that forum. Six months later, after several adjournments and after stating that the motion required

oral argument, the District Court, without conducting the heretofore necessary argument, denied the motion. The same day the contempt motion was denied, the District Court without notice, without a hearing and without a request therefore, issued a sua sponte permanent injunction barring Petitioner's counsel form filing any new papers in the consolidated Chapter XI's, save for those which would aid in the pending appeals.*

A search on the Bankruptcy Court files on November 9, 1978, after the adjournment of the contempt motion in the District Court yielded a series of correspondence going back to April 1978, among the Bankruptcy Court, Respondents' counsel and Thomas H. Magid, a representative of the minority shareholders, who are the brothers and sister of the President of Respondnet corporations.

---

*On October 29, 1979, oral argument was heard in the Court of Appeals on the appeal of the District Court's sua sponte permanent injunction. Gilbert S. Rosenthal, Esq., the recipient of the New York State Bar Association's Criminal Lawyer of the Year Award for 1979, appeared "Of Counsel" to Petitioner's counsel on the appeal, in which it was urged that the District Court's Order contained knowingly false statements. This appeal is presently sub judice in the Court of Appeals.

In his letters to the Bankruptcy Court, Thomas Magid advised the Court that four pending law suits against the corporations and its officers, one of which was a shareholders' derivative action charging the officers with fraud, mismanagement, coversion and waste, had been omitted from the Petitions, Schedules and Statements filed in the Chapter XI, and that the law suits were apparently concealed from the creditors and the Court.

The Bankruptcy Court referred the minority shareholders' letters to Respondents' counsel, who advised that the Court had entered an order several years earlier confirming the Chapter XI's and that the Court therefore lacked jurisdiction to entertain the charges of bankruptcy fraud, etc. The Court, after receiving a copy of Respondents' counsels' letter addressed to Thomas Magid, sent its own letter concurring in Respondents' counsels' advices.

After contacting the representative of the minority shareholders, and upon receiving additional information and documentation of other acts of bankruptcy fraud, Petitioner moved to impose sanctions and to revoke the fee awarded to Respondents' counsel eighteeen days after the order of confirmation and discharge terminated the Chapter XI's. The motion was returnable on December 8, 1978.

On December 6, 1978, the Court of Appeals handed down its Per Curiam Opinion which affirmed the District Court's Memorandum and Order which in turn upheld the Bankruptcy Court's Order and Amended Order. Despite the fact that the Bankruptcy Court's Amended Order provided for post-Confirmation dollar-

for-dollar commission payments to Petitioner for deliveries made to Respondent's after the Chapter XI had terminated which payments were recorded as "expenses of administration, the Court of Appeals repeated the District Court's error that no such jurisdiction was taken post-Confirmation:

> [4] Equally unfounded is appellant's contention that the bankruptcy judge erred in denying priority status to her claim for commissions as an administration expense. The record establishes that appellant has received payment in full on all deliveries made by Rudd to Hartford during the period of arrangement. If appellant believes that she has not received commissions due her on deliveries made thereafter, her remedy lies not in the bankruptcy court nor on this appeak, but in a plenary action at law. See In re Gordon, 44 S.Supp. 581. (S.I.) N.Y. 1942); 9 Collier on Bankruptcy ¶¶8.11, 8.12 (14th ed. 1975)*

*On October 1, 1979, the Supreme Court entered an order denying Petitioner's Petition for a Writ of Certiorari in Case No. 79-178 and thereby left standing the Court of Appeals Per Curiam Opinion, despite the voluminous documentation detailing this error, and numerous others.

On December 8, 1978, the Bankruptcy Judge denied the motion seeking the imposition of sanctions, etc., stating that the Court was a Court of limited jurisdiction and lacked jurisdiction post-Confirmation to impose sanctions or to revoke the fee awarded to Respondents' counsel. While ignoring his order which approved the fee application after the Chapter XI had ended, the "Amended Order" which provided for payment of commissions to Petitioner earned after the date of Confirmation and Discharge and the Order of Confirmation and Discharge which specifically reserved such jurisdiction, the Court did state on the Record that it had informed the United States Attorney's Office that Respondents and their counsel had "lied". The Court further categorized the Chapter XI proceedings as a "ripoff" of everybody.

Despite citing a "lack of jurisdiction" post-Confirmation to impose sanctions on Respondents' counsel, the Court, in a pique of anger, turned around and imposed sanctions on Petitioner's counsel for bringing the motion to impose sanctions of Respondents' counsel.

Four days later, on December 12, 1978, the District Court (Carter, J.) granted Respondents' Motion to Dismiss Petitioner's appeal from the Bankruptcy Court's orders of August 9, 1978 and September 19, 1978 which denied the motion to vacate the original Order and Amended Order, without allowing a hearing on the merits of the appeal. Though stating that he lacked jurisdiction to grant the motion in view

of the Court of Appeals' Per Curiam Opinion handed down the week before, the Court did state that it often disagreed with the Circuit Court's opinions.

On December 21, 1978, Petitioner returned to the District Court on the motion for contempt against Respondent's counsel and additional motions seeking to have the District Court vacate its original Memorandum and Order which was affirmed by the Per Curiam Opinion. The Court refused to vacate its order, but acknowledged its awareness that the Bankruptcy Court in its Amended Order had in fact provided for post-Confirmation commission payments to Petitioner, in the following exchange:

> MR. SHUFFMAN: Your Honor under Smith v. Pollen adopted in this circuit by Ryan v. United States Lines, this court does have the duty to move in the Court of Appeals for a remand now that it knows its own affirmance was in error.
>
> THE COURT: I don't know that. They tell me that it's not in error. I don't know that there is any action by this court that is in error.
>
> MR. SHUFFMAN: Your Honor stated that you did not take jurisdiction for a period of post-Confirmation, yet you ordered the appellant paid monies post-Confirmation.

> THE COURT: That is what the bankruptcy judge ordered.*

On January 9, 1979, the Bankruptcy Court denied Petitioner's motion to rehear the December 8, 1978 Order again citing lack of jurisdiction to do anything post-Confirmation. The Court also stated on the Record that Petitioner did not retain as her consultant Ephraim Leibowitz, Esq., the Bankruptcy expert whose column on Bankruptcy Practice is a regular feature on Page 1 of the New York Law Journal. Of course, documents proving that Leibowitz was in fact retained were already on file in the Court of Appeals, together with a partial list of those "findings of fact and conclusions of law" which he found to be "clearly erroneous." Leibowitz also concurred in the fact that the proceedings in the Bankruptcy Court were marred by numerous acts of wrongdoing.

---

* Petitioner is presently in the midst of preparing a Petition for a Writ of Certiorari to the Supreme Court from the Court of Appeals' Order granting Respondents' Motion to Dismiss the Appeal from the District Court's December 21, 1978 order which motion was granted without allowing the appeal to be heard on the merits.

The Bankruptcy Judge, who at the time of the hearing was a member of the faculty for several seminars on the new Bankruptcy Reform Act which had as its faculty co-chairmen the two senior partners of Respondents' counsels' law firm in charge of the Chapter XI's finished the hearing by imposing a $50 fine for contempt upon Petitioner's counsel.* The Court then appointed Respondents' counsel to represent the United States on the appeal of the contempt order even though it had filed a complaint against respondents' counsel with the United States Attorney's Office.

*On October 3, 1979, Melvin Wulf, Esq., a former director of the Civil Liberties Union and presently a partner of former Attorney General Ramsey Clark at Clark, Wulf, Levine & Peratis, which had been retained to represent Petitioner's counsel on the Bankruptcy Court's orders imposing both sanctions and contempt, argued in favor of the disqualification of Respondents' counsel citing what he termed the "serious charges" of wrongdoing pending against both the Bankruptcy Court and Respondents' counsel. This Appeal is presently sub judice in the District Court, wherein one of the issues presented raises the "clearly erroneous" posture of the Court of Appeals Per Curiam Opinion. Unless reversed this Appeal will ultimately reach the Supreme Court.

On April 24, 1979, the Court of Appeals for the Second Circuit granted Rspondents' Motion to Dismiss the Appeal of the District Court's Decmeber 12, 1978 Order which in turn granted Respondents' motion in that forum to dismiss the appeal of the Bankruptcy Court's August 9, 1978 and September 19, 1978 orders refusing to vacate its original Order and Amended Order which were ultimately upheld when the Supreme Court denied certiorari in Case No. 79-178.

Had Petitioner been allowed to argue the merits of her appeal of the Bankruptcy Court's refusal to vacate its original Order and Amended Order in either the District Court on the Court of Appeals, the Supreme Court might have been spared the humiliation of having left standing the Bankruptcy Court's original Order and Amended Order. Instead, the fact is that the character, integrity and reputation of the Justices of the United States Supreme Court are now very much in question as a result of the High Court's ratification of the fix and cover up of the fix in the Courts below.

This Petition seeks to have the Court direct the lower Courts to reverse their Orders dismissing the Appeals with a further direction to the Bankruptcy Court to grant the Motion to Vacate its Order and Amended Order. In this way, the slate can be wiped clean, so that Petitioner may seek anew EQUAL JUSTICE UNDER LAW.

SUMMARY OF THE ARGUMENT

At least one former Attorney General, a Harvard Law School professor with expert credentials on bankruptcy related matters, the New York Law Journal's columnist on Bankruptcy Practice, the District Court Judge whose Memorandum and Order was affirmed by the Court of Appeals and literally dozens of others in both civil and criminal law all argree that based upon the documentary evidence, the original Order and Amended Order of the Bankruptcy Court are "clearly erroneous".

There is no question that when the Court of Appeals states that the Bankruptcy Court's jurisdiction terminated on September 5, 1974, but then goes ahead and affirms that Court's having taken jurisdiction for the period after September 5, 1974, and further affirms an "Amended Order" which provides commission payments earned after September 5, 1974, the Court of Appeals missed the boat and had no idea what it was doing.

There is also no question that under Article III of the United States Constitution, United States Judges have a duty to honestly administer the cases and controversies over which they have jurisdiction.

There is, however, a very serious question about whether the case and controversy underlying the instant petition for a writ of certiorari was honestly adjudicated in the Courts below. Those who are familiar with the law and the facts involved in this case agree that it could not have been.

Human fallibility and human error are not uncommon, nor are innocent or honest mistakes. The cover up of those mistakes, however, is a crime. It is indeed much more serious a crime when the cover up is orchestrated by judges.

The Bankruptcy Court had an absolute duty to vacate its original Order and Amended Order. When it refused to do so, the reviewing courts had an absolute duty to allow the appeals to be heard on the merits based upon the Bankruptcy Court's abuse of discretion and breach of duty. Instead, they chose to dismiss the appeals without ever allowing them to be heard upon the merits.

As a result, one injustice has mushroomed and multiplied to the point where the integrity of the entire Federal Judiciary is now open to question. The United States Supreme Court should - nay, must - exercise its discretion and review anew the underlying controversy in the instant proceedings.

At stake is the entire rule of law. The Bankruptcy Court should have vacated its Orders. The Supreme Court should now do what the lower Courts refused to do. It must reverse, remand and issue precise directions that the Orders below be vacated.

ARGUMENT

The Per Curiam Opinion of the United States Court of Appeals dated December 6, 1978, left standing by this Court's denial of a petition for a writ of certiorari in Case No. 79-178, is clearly erroneous both on the facts and the law. To make matters worse, it directly contradicts the orders which it was intended to affirm.

The Justices of the United States Supreme Court are not ostriches. The Court was aware, or should have been aware, of the fraud and injustice practiced upon the Petitioner herein by the Courts below based upon the prior petition.

Petitioner is not going to just "go away". She is determined to obtain a fair and honest adjudication of her cause. She has a right to receive that fair and honest adjudication.

At this point, Petitioner cannot receive that honest adjudication without creating a major scandal involving dozens of judges in the Courts below.

Obviously, if the Supreme Court does not step in to straighten out the mess, it, too will be subject of corruption charges.

The legal profession and the judiciary are already the focal point of intense scrutiny, mounting criticism and a simmering controversy. The case at bar is a good illustration of why.

Petitioner, a widow, had the abject misfortune of being a claimant in an innocuous Chapter XI wherein the Chapter XI debtors were represented by a powerful and prestigious law firm. At its inception, Petitioner's claim, and Respondents' Chapter XI, weren't really very important to anybody, save for the litigants.

During the course of the litigation, it became obvious that the Chapter XI debtors, upon advice of counsel, had made several major mistakes, which, if known prior to confirmation, would have resulted in a denial of discharge.

Instead of owning up to their mistakes, the parties involved opted for the traditional escape - the cover up. They even offered Petitioner a small bone in the hope that she would go away. That bone turned out to be their undoing.

As with most cover ups, future contingencies can not be completely planned for from the beginning. The sop the Respondents volunteered, $3,346.71 from the date of discharge on September 5, 1974 until the end of the calendar year, which was approved by the Bankruptcy Judge would be their undoing. Both the District Court and Court of Appeals held that the Court's jurisdiction terminated on September 5, 1974, and that the Courts had no power to order any monies paid after that date.

How the reviewing Courts missed the fact that they did affirm the payment of money which they said they couldn't do and wouldn't do is as great a mystery as

the "new" contract found by the Bankruptcy Court without an evidentiary hearing as the reason for the payments. After all, the payments were originally stopped on advice of counsel on September 5, 1974 because there was no "new" contract.

As with all of the elements of the fix, and cover up, they are well supported by documentary evidence. The Solicitor General of the United States volunteered additional documentation of the wrongdoing in the form of the exhibits annexed to his Memorandum For the Federal Respondents In Opposition to the Motion For Leave to File A Petition For A Writ of Mandamus and Petition for a Writ of Mandamus in the related Case No. 79-681. Obviously, he didn't do his home-work.

Nixon taught the American people that no one is above the law, not even a President. The Justices of this Court are in the unenviable position of being asked to repeat his performance. One thing is absolutely certain; if the Justices of the Supreme Court deny the instant petition, they will be tying the noose around their own necks.

Petitioner asked the Bankruptcy Court to vacate its orders while the fall-out from the wrongdoing would be minimal and when the falling chips would not be as damaging as they are now. It is indeed a shame that the Bankruptcy Court didn't take advantage of the opportunity.

At the same time that the Bankruptcy Court clairvoyantly made the "amended findings", it was exhorting Petitioner to take her

complaints about its brand of justice to the Chief Justice of the United States. Obviously, with the lower Courts' dismissal of the appeals without allowing them to be heard on the merits, that is just what is happening.

The character, integrity and reputation of the Supreme Court has already been sullied by its order denying the petition for a writ of certiorari in Case No. 79-178. Fortunately, the High Court does have the opportunity to review its prior order as a result of the instant petition. You can lead a horse to water, but you can't force him to drink it. The Supreme Court, however, is too important to consciously condone judicial misconduct.

Were it not for the fact that the case at bar involves real people, one could safely say that the scenario is straight out of Ripley's Believe It Or Not or the screen play for the sequel to ". . . And Justice For All." Tragically, it is not.

Petitioner lost her case in the Courts below to a plain old fashioned fix and cover up. At least that is the opinion of her expert advisers. She has also lost in the Supreme Court.

Money is not everything. The United States of America must not lose its Supreme Court. The petition for a writ of certiorari must be granted. The Bankruptcy Court's Order and Amended Order must be vacated.

IMPORTANCE OF THIS PETITION

The importance of this petition can not be overstated. Very simply, the denial of this petition will provide the antagonists of the Supreme Court with the ammunition they need to prove that the Court is corrupt.

Petitioner lost to a fix in the Bankruptcy Court, which was covered up by both the District Court and Court of Appeals. One former Attorney General of the United States has gone so far as to call it a "clumsy" cover up.

The Supreme Court turned its back on Petitioner when it denied her petition for a writ of certiorari in Case No. 79-178. Since that time Petitioner's Motion For Leave to File a Petition For a Writ of Mandamus and Petition For a Writ of Mandamus in Case No. 79-681, now pending has resulted in the further release of additional documentation of wrongdoing in the Court of Appeals.

Petitioner must not lose to a cover up of that fix by the United States Supreme Court. If she does, eventually the world will learn of the High Court's dishonesty.

CONCLUSION

Petitioner respectfully prays that the petition for a Writ of Certiorari be granted.

Respectfully submitted,

DAVID K. SHUFFMAN
Attorney for the Petitioner
14 East 60th Street
New York, New York 10022
(212) 755-0006

New York, New York
December 13, 1979

UNITED STATES COURT OF APPEALS

SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Court House, in the City of New York, on the 24th day of April, one thousand nine hundred and seventy nine.

----------x

In the Matter of	:	
HARTFORD TEXTILE CORPORATION, OXFORD CHEMICALS, INC. WELLINGTON PRINT WORKS, INC.,	:	Docket # 79-5005
Debtors.	:	

----------x

It is hereby ordered that the motion made herein by counsel for the debtors-appellees to dismiss the appeal by notice of motion dated February 23, 1979 be and it hereby is granted.

/s/ William M. Mulligan
Hon. William H. Mulligan,C.J.

/s/ E.A. Van Graafeiland,
Hon. Ellsworth A. Van Graafeiland, C.J.

/s/ Lloyd F. MacMahon
Hon. Lloyd F. MacMahon*

*United States District Judge for the Southern District of designation.

UNITED STATES COURT OF APPEALS

For The

SECOND CIRCUIT

At a stated term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Court House, in the City of New York, on the twenty-sixth day of September, one thousand nine hundred and seventy-nine.

BEFORE: HON. IRVING R. KAUFMAN, CH.J.
HON. WILFRED FEINBERG, C.J.
HON. WALTER R. MANSFIELD, C.J.
HON. JAMES L. OAKES, C.J.
HON. WILLIAM H. TIMBERS, C.J.
HON. MURRAY I. GURFEIN, C.J.
HON. ELLSWORTH A. VAN GRAAFEILAND,C.J.
HON. THOMAS J. MESKILL, C.J.
HON. JON O. NEWMAN, C.J.
HON. AMALYA L. KEARSE, C.J.
HON. LLOYD F. MacMAHON,D.J.

----------x

In the Matter of

HARTFORD TEXTILE CORPORATION, OXFORD CHEMICALS, INC., WELLINGTON PRINT WORKS, INC.,	:	Docket #
Debtors.	:	79-5005

----------x

ROSE SHUFFMAN, As Executrix of the Estate of OSCAR SHUFFMAN,	:	
Appellant,	:	
-against-	:	
HARTFORD TEXTILE CORPORATION, OXFORD CHEMICALS, INC., WELLINGTON PRINT WORKS, INC.	:	
Appellees	:	

----------x

A motion for rehearing of this court's order of April 24, 1979 granting the motion dismissing the appeal herein containing a suggestion that the matter be heard en banc, having been filed herein by counsel for the appellant, and no active judge or judge who was a member of the panel having requested that a poll be taken on said suggestion.

UNPON CONSIDERATION thereof, it is

ORDERED that said suggestion be and it hereby is DENIED.

A. DANIEL FUSARO,
Clerk

/s/ Arthur Heller

BY: Arthur Heller,
Deputy Clerk

UNITED STATES COURT OF APPEALS

SECOND CIRCUIT

As a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Court House, in the City of New York, on the 26th day of September, one thousand nine hundred and seventy-nine.

In Re: HARTFORD TEXTILE CORP., et al. Debtors.	:	
ROSE SHUFFMAN, As Executrix of the Estate of OSCAR SHUFFMAN, Appellant.	:	Docket # 79-5005
-against-	:	
HARTFORD TEXTILE CORPORATION, OXFORD CHEMICALS, INC., WELLINGTON PRINT WORKS, INC., Appellees.	:	

It is hereby ordered that the motion made by counsel for the appellant by notice of motion dated April 30, 1979 for rehearing and reargument of this court's order of April 24, 1979 be and it hereby is denied.

/s/ William H. Mulligan
Hon. William H. Mulligan

/s/ E.A. VanGraafeiland
Hon. Ellsworth A. Van Graafeiland,
Circuit Judges

/s/ Lloyd F. MacMahon
Hon. Lloyd F. MacMahon,
District Judge